



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0075; EPA-R05-OAR-2016-0090; FRL-9946-08-Region 5]

Air Plan Approval; Indiana; Commissioner's Orders for A. B.

Brown and Clifty Creek

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of revisions to the Indiana State Implementation Plan (SIP) submitted by the Indiana Department of Environmental Management (IDEM) to EPA in parallel process form on January 27, 2016, and February 5, 2016, and final form on March 21, 2016, and March 31, 2016. The submittals consist of orders issued by the Commissioner of IDEM that require more stringent sulfur dioxide (SO₂) emissions limits than those currently contained in the SIP for Vectren's A. B. Brown Generating Station (A.B. Brown) and Indiana-Kentucky Electric Corporation's Clifty Creek Generating Station (Clifty Creek). EPA proposed approval of these revisions to the Indiana SIP on February 25, 2016 and received no adverse comments. EPA's approval of these revisions makes the Commissioner's orders' SO₂ emissions limits and applicable reporting, recordkeeping, and compliance demonstration requirements federally enforceable.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0075 and EPA-R05-OAR-2016-0090. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Jenny Liljegren, Physical Scientist, at (312) 886-6832 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6832, Liljegren.Jennifer@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Why Did IDEM Issue These Commissioner's Orders?
- II. What Are the SO₂ Limits in These Commissioner's Orders?
- III. By What Criterion is EPA Reviewing This SIP Revision?
- IV. What Action is EPA Taking?
- V. Incorporation by Reference.
- VI. Statutory and Executive Order Reviews.

I. Why Did IDEM Issue These Commissioner's Orders?

IDEM submitted parallel process revision requests to its SIP on January 27, 2016, and February 5, 2016, for A. B. Brown and Clifty Creek, respectively, and final revision requests on March 21, 2016, and March 31, 2016, for Clifty Creek and A. B. Brown, respectively. The submittals consist of orders issued by IDEM's Commissioner that establish more stringent SO₂ emissions limits than those currently contained in the SIP for A.B. Brown and Clifty Creek. The orders also contain applicable reporting, recordkeeping, and compliance demonstration requirements. Each order contains a requirement to determine compliance by the use of a continuous emissions monitoring system (CEMS), to maintain records adequate to document compliance with the SO₂ emissions limits, to submit to IDEM quarterly reports, and to apply to incorporate these order requirements, including the emissions

limits, reporting and recordkeeping requirements, and methods to determine compliance into each facility's Part 70 operating permit, respectively. IDEM established these SO₂ emissions limits to enable the areas near A. B. Brown and Clifty Creek to qualify in the future for being designated "attainment" of the 2010 primary SO₂ National Ambient Air Quality Standard (NAAQS). Under a Federal consent decree,¹ EPA is required to designate, under the 2010 SO₂ NAAQS, certain areas in the United States including the areas near A. B. Brown and Clifty Creek by July 2, 2016. The history of the 2010 SO₂ NAAQS and the consent decree is explained in detail in the February 25, 2016 proposed rule (81 FR 9395).

The purpose of this rulemaking is to take action on IDEM's request to approve these Commissioner's orders into the Indiana SIP and thereby make them federally enforceable. It is not, however, to take action on whether the SO₂ emissions limits in these Commissioner's orders are adequate for EPA to designate attainment of the 2010 SO₂ NAAQS for the areas near A. B. Brown and Clifty Creek. EPA intends to designate the areas near the sources that meet the criteria for the first phase of the consent decree designations, including the areas near A. B. Brown and Clifty Creek, under a separate future rulemaking,

¹ *Sierra Club v. McCarthy*, No. 3-13-cv-3953 (N.D.Cal. March 2, 2015)

which was the subject of an EPA proposal on March 1, 2016, "EPA Responses to Certain State Designation Recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standard: Notice of Availability and Public Comment Period" (81 FR 10563).

Indiana requested that EPA "parallel process" these SIP revisions to expedite action on the Commissioner's orders. Under this procedure, the state submitted copies of the draft revision requests to EPA on January 27, 2016, and February 5, 2016, for A. B. Brown and Clifty Creek, respectively, before completing its public comment process. EPA published a proposed rulemaking in the Federal Register (81 FR 9395) and solicited public comment in approximately the same timeframe during which the state solicited public comment. Indiana received and responded to comments received during its public process. EPA received two comments. One comment supported the proposed Clifty Creek emissions limit. A second comment, associated with the A.B. Brown order, was not germane to our current action.

Indiana submitted its final SIP revision requests to EPA on March 21, 2016, and March 31, 2016, for Clifty Creek and A. B. Brown, respectively. There were no changes to the original Commissioner's Orders (2016-01 and 2016-02). As a result, EPA is proceeding with this final rulemaking.

II. What Are the SO₂ Limits in These Commissioner's Orders?

For A. B. Brown, Indiana issued Commissioner's Order 2016-

01 on January 11, 2016, with a compliance date of April 19, 2016. This order established two new limits for A. B. Brown: one limit for Unit 1 when running alone and one limit for Units 1 and 2 when running simultaneously. The emissions limits are 0.855 lbs of SO₂ per MMBTU for coal-fired boiler Unit 1 operating alone and 0.426 lbs of SO₂ per MMBTU for Units 1 and 2 operating simultaneously. These limits supplement a limit contained in a February 22, 1979, Prevention of Significant Deterioration (PSD) permit of 0.69 pounds per MMBTU for coal-fired boiler Unit 2.

For Clifty Creek, Indiana issued Commissioner's Order 2016-02 on February 1, 2016, with a compliance date of April 19, 2016. This order established a combined emission limit for the six coal-fired boilers (Units No. 1 through No. 6) located at Clifty Creek of 2,624.5 lbs of SO₂ per hour as a 720 operating hour rolling average when any of Units No.1 through No. 6, or any combination thereof, is operating.

III. By What Criterion is EPA Reviewing This SIP Revision?

EPA is evaluating these revisions on the basis of whether they strengthen Indiana's SIP. Prior to Commissioner's Order 2016-01, A.B. Brown had an SO₂ emissions limit in its operating permit of 6.0 lbs SO₂ per MMBTU for coal-fired boiler Unit 1. Prior to Commissioner's Order 2016-02 Clifty Creek had an SO₂ emissions limit in its operating permit for Units 1 through 6 not to exceed 7.52 lbs of SO₂ per MMBTU on a thirty (30) day

rolling weighted average. The new SO₂ emissions limits established by IDEM in Commissioner's Order 2016-01 and Commissioner's Order 2016-02 for A.B. Brown and Clifty Creek, respectively, are substantially more stringent than the previous limits and will therefore strengthen Indiana's SIP.

The adequacy of these limits for providing for attainment of the 2010 primary SO₂ NAAQS is not a prerequisite for approval of these limits. Nevertheless, the purpose of these limits is to provide for attainment, and the adequacy of these limits for this purpose is addressed in a separate rulemaking (81 FR 10563). On February 16, 2016, EPA wrote a letter to Indiana stating that we intended to designate the areas near A. B. Brown and Clifty Creek as nonattainment in the absence of federally enforceable limits. The letter also stated that if the limits in the Commissioner's orders (2016-01 and 2016-02) were made federally enforceable, EPA anticipated that we would designate suitable portions of Posey county and Jefferson county as attainment/unclassifiable. EPA solicited public comments on this proposal (81 FR 10563), and EPA intends to make final the designation determinations for the areas of the country addressed by these responses, including the areas near A. B. Brown and Clifty Creek, no later than July 2, 2016. EPA received adverse comments pertaining, among other things, to the portion of this rulemaking that indicated that the A. B. Brown

and Clifty Creek proposed limits, if made federally enforceable, would suffice to justify an attainment/unclassifiable designation. EPA is currently reviewing these and other comments received regarding that proposal.

IV. What Action is EPA Taking?

EPA is finalizing approval of Commissioner's Order 2016-01 and Commissioner's Order 2016-02 into the Indiana SIP. EPA confirms that the SO₂ emissions limits in these orders for A. B. Brown (Commissioner's Order 2016-01) and Clifty Creek (Commissioner's Order 2016-02) are more stringent than the current SIP SO₂ emissions limits for these sources. By approving these Commissioner's orders into the Indiana SIP, these SO₂ emissions limits and applicable reporting, recordkeeping, and compliance demonstration requirements contained in the orders become federally enforceable and strengthen the Indiana SIP.

V. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Administrative Code described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy

at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VI. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act (CAA) and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal

implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may

be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 27, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770 the table in paragraph (d) is amended by adding new entries for “A.B. Brown Generating Station” and “Clifty Creek Generating Station”, to read as follows:

§ 52.770 Identification of plan.

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(d) * * *

EPA-Approved Indiana Source-Specific Provisions

| CO Date | Title | SIP Rule | EPA approval | Explanation |
|----------------|---------------------------------|-----------------|--|---|
| * * * | * * * | * * * | | |
| 1/11/2016 | A.B. Brown Generating Station | N.A. | [insert date of publication in the Federal Register], [insert Federal Register citation] | Limitation intended to support attainment designation |
| 2/1/2016 | Clifty Creek Generating Station | N.A. | [insert date of publication in the Federal Register], [insert Federal Register citation] | Limitation intended to support attainment designation |

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